

Voluntary Pension Law no. 204/2006

Table of contents

CHAPTER I	GENERAL PROVISIONS	1
CHAPTER II	SETTING UP OF PENSION COMPANIES, LICENSING AND WITHDRAWING THE LICENSE OF ADMINISTRATORS	4
CHAPTER III	LICENSING OF VOLUNTARY PENSION SCHEME PROSPECTUS	12
CHAPTER IV	SETTING UP, LICENSING AND WITHDRAWING THE LICENSE OF VOLUNTARY PENSION FUNDS	14
CHAPTER V	SPECIAL SUPERVISION	16
CHAPTER VI	SPECIAL ADMINISTRATION	17
CHAPTER VII	TRANSFERS BETWEEN VOLUNTARY PENSION FUNDS	18
CHAPTER VIII	PARTICIPANTS AND CONTRIBUTIONS	19
CHAPTER IX	PARTICIPANT ACCOUNTS AND EVALUATION OF ASSETS	20
CHAPTER X	INVESTMENTS MADE BY VOLUNTARY PENSION FUNDS	21
CHAPTER XI	ADMINISTRATOR REVENUES	23
CHAPTER XII	PAYMENT OF PENSION BENEFITS	24
CHAPTER XIII	INTERDICTIONS	25
CHAPTER XIV	REPORTING AND TRANSPARENCY OBLIGATIONS	25
CHAPTER XV	ASSET DEPOSITARY	27
CHAPTER XVI	TECHNICAL PROVISIONS AND GUARANTEES REGULATED AND SUPERVISED BY THE COMMISSION	29
CHAPTER XVII	LEGAL RESPONSIBILITY	30
CHAPTER XVIII	FINAL AND TRANSITION PROVISIONS	31

Chapter I - General provisions

ART.1 (1) The present law sets out:

- a) Principles for the drafting and licensing of the voluntary pension scheme prospectus and of the pension fund;
- b) Principles for the organization and functioning of administrators, as well as the coordination of the activity of other entities involved in the field;
- c) The regulation and prudential supervision of the management of voluntary pension funds.

ART.2 (1) In the present law, these terms and expressions have the following meanings:

1. pension fund assets are financial instruments, including derivatives, as well as cash, resulting from the investment of participants' personal assets;
2. personal asset is the amount gathered in the account of a participant; it equals the number of fund units held by the participant multiplied with the current value of a fund unit;
3. the total net asset of a pension fund on a certain date is the value obtained by deducting the value of fund obligations from the value of fund assets for that day;

4. individual joinder act is a written contract, signed between an individual and the administrator and containing the agreement of that individual to become a party to (join) the civil contract and the pension scheme prospectus;
5. significant shareholder is a natural, legal person or group of natural and/or legal persons who act together and either directly or indirectly hold 10% or more of the common stock of a company or its voting rights, or hold stock that enable them to exercise significant influence on the management and business policy of this company.
6. special administration consists in the exercise of fiduciary responsibility by the special administrator, for a finite period, toward pension fund assets, in order to limit losses to protect the rights due to participants and beneficiaries;
7. special administrator can be any legal entity licensed to manage a pension fund, appointed the Commission; the special administrator replaces the administrator in its rights and obligations, for a finite period;
8. the administrator can be a pension company, an asset management company or an insurance company, licensed in compliance with the laws that regulate their respective fields, holding a valid license and holding an [additional] license from the Private Pension Supervision Commission, in compliance with the present law, for the management of voluntary pension funds and, optionally, for providing private pension benefits;
9. employer is a legal or natural person entitled by the law to hire people based on individual labor contracts, according to the Labor Code (Law 53/2003 with subsequent amendments and supplements) or on labor relationships, according to Law 188/1999 regarding public clerks, republished, together with the subsequent amendments;
10. beneficiary is an heir of the participant, as defined by the Civil Code;
11. collateral benefits are any benefits, such as money or gifts, other than those ensuing from the status of participant or beneficiary of a voluntary pension;
12. Private Pension System Supervision Commission, hereinafter 'the Commission', is the autonomous administrative authority, with legal personality, under the control of the Parliament of Romania, according to the provisions of Government Ordinance 50/2005 regarding the establishing, organization and functioning of the Private Pension System Supervision Commission, approved by Law no. 313/2005;
13. Special Supervision Council is made up of two or several persons, depending on the number of voluntary pension funds that are managed or on their number of participants, who are part of the specialized staff of the Commission and who assist and supervise the activity of the administrator in order to limit risk and to ensure the recovery of the pension fund;
14. management contract is the contract signed between the administrator and the participant, its object being the management of the pension fund;
15. contributions are amounts paid by participants and/or on their behalf to a pension fund;
16. depositary is a Romanian credit institution licensed by the National Bank of Romania, according to banking legislation, or a Romanian branch of a credit institution licensed in a EU or EES state, licensed by the Commission for depositing, according to the law, which gets all the assets of each pension fund for safe-keeping;
17. pension fund is the fund set up via civil contract signed among participants, in compliance with Civil Code provisions regarding the private civil society (association) and with the provisions of the present law;
18. pension guarantee fund is a nationally-established fund, made up of administrator

contributions; its purpose is the protection of rights that participants or beneficiaries, as the case may be, have in the pension system that is regulated and supervised by the Commission;

19. financial instruments are

- a) securities,
- b) collective investment institution titles,
- c) money market instruments, including T-bonds due in less than a year and deposit certificates,
- d) financial futures, including similar contracts with final fund settlement,
- e) interest-rate forward contracts,
- f) interest rate, exchange rate and equity swaps,
- g) options for any financial instrument described at letters a-d, including similar contracts with final fund settlement, including exchange rate and interest rate options,
- h) any other instrument accepted for trading on a regulated market in a EU or EES state, or an instrument for which someone has made an application to be accepted for trading on such a market;

20. derivatives are the instruments defined by point 19, letter d and g, combinations thereof, as well as other instruments defined as derivatives by regulations issued by the National Securities Commission;

21. participant is a person who contributes and/or on whose behalf contributions have been made to a pension fund and who has a future right to voluntary pension benefits;

22. voluntary pension benefits refer to the amount paid periodically to the person entitled to benefits or to the beneficiary, for their whole lifetime, in addition to and separate from the benefits provided by the public system;

23. the daily proportion of a fund equals the ratio between the net asset of the fund and the sum of the net assets of all funds, calculated for that day;

24. the average proportion of a fund for a certain period equals the arithmetic mean of daily proportions of the funds for that period;

25. voluntary pension scheme prospectus is the document including the terms of the management contract of the pension scheme;

26. Technical provision is an adequate volume of liabilities corresponding to financial commitments resulting from the investment portfolio covering biometric and investment risks.

27. the rate of return of a voluntary pension fund is the annualized rate of the product of daily returns, measured for 24 months; the daily return of a fund equals the ratio between the value of a fund unit in that day and its value in the previous day;

28. the weighted average rate of return of all funds is the sum of products between the rate of return of each fund and the average proportion of the fund in the total voluntary pension funds for that period;

29. minimum rate of return of all funds is the lowest value between the weighted average rate of all funds for that period less 4% on the one hand and 50% of the weighted average rate of return of all funds for that period on the other;

30. biometric risks are related to death, disability and longevity;

31. voluntary pension scheme is a system of terms, conditions and rules based on which the administrator collects and invests voluntary pension fund assets so that participants get voluntary pension benefits;

32. pension company is the newly established joint-stock company, set up in compliance with the provisions of commercial legislation and the provisions of the present law, whose exclusive object of activity is the collecting, management and investment of the assets of a voluntary pension fund and, optionally, the providing of

private pension benefits;

33. Origin member state is the EU member state or EES state where the administered is headquartered and where its main administrative structure is located; if the administrator does not have a headquarter, then it is the place where its main administrative structure is located;

34. Host member state is the EU or EES member state whose social and labor legislation relevant for voluntary pensions applies to the relationship between employer and participants;

35. third-party state is any state who is not a member of the EU or does not belong to the European Economic Space;

36. fund unit is a subdivision of the net assets of the voluntary pension fund;

(2) An affiliated person of a natural or legal person, called 'the first entity', is:

a. a shareholder or group of shareholders who hold more than 10% of the shares issued by the first entity or who hold less than 10% but can influence, directly or indirectly, the decision made by the first entity;

b. any entity in which the first entity holds, directly or indirectly, more than 10% of the issued shares or which, although holding less than 10%, can influence directly or indirectly the decisions made by that entity;

c. any other entity in which a shareholder holds, directly or indirectly, more than 30% of the total issued shares, while at the same time holding, either directly or indirectly, more than 30% of the total shares issued by the first entity;

d. any person who can determine, either directly or indirectly, the decisions of the first entity;

e. any member of the administration board or other management or supervision body of that entity;

f. the spouse or relative up to the third degree or in-laws up to the second degree of any of the persons mentioned at letters a-e above.

Chapter II Setting up of pension companies, licensing and withdrawing the license of administrators

ART.3 (1) Voluntary pension funds can be managed by pension companies, investment management companies and insurance companies that have been licensed by the Commission to this effect.

(2) Investment management companies and insurance companies mentioned at (1) above shall be set up and licensed according to the legislation that governs their respective fields.

ART.4 (1) Pension companies need to be licensed by the Commission for setting-up and for management.

(2) The founders who wish to establish a pension company submit to the Commission an application for authorizing the setting up of a joint-stock company.

(3) The application for the setting-up authorization shall be accompanied by the following documents:

a) draft of the articles of incorporation;

b) proof that the founders have the necessary financial resources to pay in the share capital, as well as the source of these resources;

c) criminal and fiscal records of founders;

d) documents regarding the founders, including data on their legal status, their being

- Affiliated persons and the nature of relationships among them;
- e) documents that show the financial situations of the founders over the past three years, audited by a financial auditor;
 - f) declaration of the founders and of candidates for the administration and management boards that they hold, individually or in relation with other persons involved in any commercial company, at least 5% of the share capital or voting rights;
 - g) documents regarding candidates for the administration and management board, as the case may be, dated and signed resumes that show their qualification and professional experience, copies of IDs, copies of degree certificates;
 - h) criminal and fiscal records of candidates for the administration and management board, if applicable;
 - i) draft of the pension company by-laws;
 - j) proof of full payment of the share capital;
 - k) proof of payment of the authorization fee.
- (4) The Commission may request in writing additional documents and information, according to regulations included in Commission norms.

ART.5 (1) Within 30 calendar days from receipt of the application for the setting-up authorization, the Commission may request from the founders additional documents and information, which they shall supply within 30 calendar days from the receipt of the request.

(2) The Commission shall check any aspect related to the application for the setting-up authorization and it is entitled to contact the appropriate authorities in order to get all the documents and information that it deems relevant.

ART.6 The Commission shall analyze the application and shall approve or turn it down by a motivated decision within 30 calendar days from the receipt of the last set of documents and data.

ART.7 The Commission shall approve the application for the setting-up authorization if the following conditions are simultaneously met:

- a) the founders do not have overdue liabilities to the state budget, social security budget, local budgets and special budgets;
- b) the quality of shareholders and proposed members of the board of directors and management board guarantees the right and prudential management of the pension fund;
- c) the founders and the proposed members of the board of directors and management board are not undergoing a judicial reorganization or bankruptcy procedure and have not contributed, either directly or indirectly, to the bankruptcy of legal persons, as the case may be, and were not involved in any kind of financial scandal;
- d) the proposed members of the board of directors and management board have the necessary professional training and experience for the positions they are to fulfill;
- e) the name of the pension company is not likely to mislead participants, potential participants or other persons;
- f) the founders prove the full payment in cash of the share capital.
- g) a proof that the setting-up licensing fee has been paid is submitted.

ART. 8 (1) The Commission shall turn down the application for the setting-up authorization in the following situations:

- a) the documentation is incomplete or it is not made in compliance with the provisions

of the law;

b) failing to meet one of the conditions stipulated under art. 7;

(2) The Commission shall inform the founders of the motivated rejection of the application within 5 working days from reaching the decision.

ART. 9 (1) The Founders shall register the company with the Trade Register within 30 days from receipt of the [Commission's] decision to approve the setting up.

(2) After the term mentioned in par. 1, the setting-up authorization is no longer valid.

(3) Getting the setting-up authorization does not guarantee the issuing of the management license.

ART. 10 (1) The administrator needs to get a voluntary pension fund management license from the Commission.

(2) In order to get the management license, the pension company, investment management company or the insurance company submit to the Commission an application accompanied by:

a) the registration certificate,

b) proof of payment or making up of the share capital, as the case may be,

c) draft depository contract,

d) draft civil society contract,

e) a declaration regarding the investment policy,

f) three-year business plan,

g) the draft of the voluntary pension scheme prospectus,

h) proof of payment of the management license fee,

i) any other documents required by Commission norms.

(3) Within 30 calendar days from receipt of the application for the setting-up authorization, the Commission may request additional documents and information from the pension company, investment management company or insurance company, which they shall supply within 30 calendar days from the receipt of the request.

(4) The Commission shall analyze the application and shall approve or turn it down by motivated written decision within 30 calendar days from the receipt of the last set of documents and data.

ART. 11 The rejection or approval decision shall be sent to the pension company within 5 calendar days from being reached.

ART. 12 (1) Any change in the content of documents that the management license was based on needs the prior approval of the Commission, except for cases when the administrator cannot control the change.

(2) The Commission shall analyze the changes in compliance with the licensing procedure stipulated by art. 10 and it shall approve or reject the changes. The decision shall be sent to the pension company in compliance with the provisions of art. 11.

ART. 13 (1) The Commission shall hold the Register of private pension funds and administrators, hereinafter called the Register.

(2) The Register shall include:

a) name and nature of the pension fund;

b) name, headquarters, Trade Register ID and registration number of the administrator;

c) list of administrator's shareholders, of the members of the board of directors and of

stock held by them;

- d) name, headquarters, Trade Register ID and registration number of the depository;
- e) code of the pension fund license, administrator license and depository endorsement;
- f) EU or EES state where the administrator operates, if the provisions of art. 29 (3) apply;
- g) other information required by Commission norms.

(3) The Register shall be used to record and update records regarding pension funds and their administrators.

(4) When the license is granted, the Commission shall record the administrator in the Register of private pension funds and administrators.

(5) Any change regarding the suspension or withdrawal of the administrator license shall be recorded in the Register.

ART. 14 (1) The name of the pension company that gets a management license in compliance with the present law shall include the expression “pension fund management company”.

ART. 15 (1) The activity of an administrator shall consist mainly of the following:

- a) collecting the contributions of participants, turning them into fund units and updating the data regarding participant accounts;
- b) transfer of cash and settlement of expenses related to voluntary pension fund operations;
- c) record-keeping, management and investment of pension fund assets;
- d) calculating the amount from the account of each participant at the end of the accumulation period, according to the law;
- e) calculating the net value of fund assets and of the fund unit for each working day;
- f) converting contributions and transferred cash into fund units;
- g) keeping the records of individual accounts, as well as providing documents regarding participation, notification, periodical information or transfer of participants;
- h) managing daily pension fund operations;
- i) making the payments due to the involved entities;
- j) managing relationships with the involved entities;
- k) drafting, presenting, submitting, publishing and distributing reports, in compliance with the law;
- l) managing, keeping and archiving documents regarding its own activity, the pension fund, its participants and beneficiaries;
- m) other activities stipulated by Commission norms.

(2) The assets and liabilities of each pension fund shall be organized, recorded and managed distinctly, separately from the other activities and from the administrator’s bookkeeping, with no possibility to make transfers between them or between them and the administrator.

(3) All the assets and liabilities corresponding to the management of voluntary pension funds shall be restricted, managed and organized separately from other activities of the insurance company or investment management company, as the case may be, without any possibility of a transfer between the two.

(4) The restricted assets and liabilities organized and managed separately, mentioned at par. (3) above, are limited to operations related to pension funds and auxiliary activities.

(5) The bookkeeping and accounting of operations that ensue from the application of

provisions of the present law shall be made in compliance with the applicable bookkeeping and accounting regulations.

(6) The Commission shall draft and issue accounting and archiving norms and regulations for all the entities it supervises, with the approval of the Ministry of Finance.

(7) The financial and bookkeeping statements of any entity that is subject to licensing, supervision and control of the Commission pursuant to the present law shall be drafted in compliance with specific requirements of the Ministry of Finances and with Commission regulations and shall be audited by active natural or legal persons who are members of the Romanian Chamber of Financial Auditors.

(8) The application of provisions regarding the financial auditing of entities involved in the management of pension funds shall be established by a protocol signed between the Commission and the Romanian Chamber of Financial Auditors.

ART. 16 The administrator shall have an internal audit department and a separate department in charge with the analysis of investment opportunities and placement of assets according to the chosen strategy.

ART. 17 (1) The administrator cannot delegate responsibility regarding the management of the pension fund.

(2) Subcontracting certain obligations to a third party does not exonerate the administrator from its responsibility.

(3) An administrator can manage several voluntary pension funds, each of them having a distinct voluntary pension scheme prospectus, which has been duly licensed.

ART. 18 (1) Administrator shares are registered, they cannot be converted into bearer shares, cannot be preferential shares but can be denominated.

(2) The articles of incorporation of an administrator should stipulate that shareholders cannot have preferential rights or other privileges and that it is forbidden to limit rights or impose additional obligations.

ART. 19 The administrator can acquire some or all of the share capital of another administrator only after approval of the Commission and in compliance with competition legislation.

ART. 20 (1) The share capital of the administrator cannot come from loans or credits and cannot be mortgaged.

(2) The minimum share capital necessary for the management of a pension fund is the Lei equivalent, calculated using the BNR exchange rate at the setting-up date, of 1.5 million EUR.

(3) The share capital of the administrator organized as a newly-established pension company shall be fully subscribed and paid-in, exclusively in cash, when it is set up, in an account opened with a bank that is a Romanian legal person or a subsidiary of a foreign bank licensed to operate on the territory of Romania.

(4) The minimum share capital of an administrator which is an investment manager or insurance company shall be made up to the level stipulated by par. 2, if necessary, upon getting the management license; the corresponding cash shall be paid into an account opened with a bank that is a Romanian legal person or a subsidiary of a foreign bank licensed to operate on the territory of Romania.

(5) The share capital stipulated in par. 2 shall be increased by 0.2% for the lei

equivalent of each million Euro that exceeds the lei equivalent of 200 million Euro in terms of total net assets of the pension funds managed by that entity.

ART. 21 (1) A natural or legal person cannot hold stock in more than one administrator.

(2) Any holding higher than 5% needs to be endorsed by the Commission.

(3) The quality of shareholders should meet the need to guarantee a prudent and healthy management of a pension fund and to make possible efficient supervision, in order to protect the interests of participants and beneficiaries.

(4) The administrator's shareholders should at a minimum meet the following conditions:

- a) be able to give a satisfactory justification of the source of funds used for participating in the share capital;
- b) provide all the necessary information to identify affiliation relationships with other persons;
- c) in the case of legal persons, to have been active for at least 3 years, except for legal persons formed by the merger or split of another legal person that had been active for at least 3 years before the merger or split.

ART. 22 (1) The board of directors of the administrator shall decide in matters regarding the investment policy and the financial policy of a pension fund, as well as any other attributions included in the by-laws approved by the Commission .

(2) Members of the board of directors and management board, as the case may be, need to fulfill the requirements of commercial legislation, as well as meet the following conditions:

- a) to have graduated from a higher education institution;
- b) to have a professional experience of at least 5 years in the investment, financial, legal, banking or insurance field;
- c) to have the necessary honorability for the function they are to fulfill.

(3) Members of the board of directors and management board, as the case may be, need to have a moral and professional conduct that is adequate to their position and to meet at a minimum the following requirements:

- a) not to have been denied by Romanian or foreign financial authorities the right to carry out financial activities on a permanent basis, or temporarily at the moment the licensing application is submitted;
- b) not to have held the position of manager of a Romanian or foreign company undergoing judicial reorganization or declared bankrupt, over the 2 years before the initiation of the bankruptcy procedure;
- c) not to have been part of the management of a company that did not meet its material and financial obligations to third parties when its activity ceased;
- d) to have a clean criminal and fiscal record.

ART. 23 (1) Members of the board of directors and management board of an administrator, as the case may be, cannot be members in the management bodies of:

- a) other pension fund administrators or their affiliated persons;
- b) depositary of the fund or its affiliated persons;
- c) trade unions or employer organizations.

(2) The interdiction stipulated by par. (1) also apply to persons who have labor, commercial or other similar relationships with the entities stipulated at par. (1).

ART. 24 (1) The administrator must act exclusively in the best interest of the participants and apply prudential principles in its activity.

(2) The administrator cannot be an affiliate of the employer or depositary.

ART. 25 (1) The financial assets of the administrator cannot be used:

a) for giving loans;

b) as collateral for loans or credits;

(2) All transactions made by an administrator on its own behalf shall comply with the prudential investment principles that apply to pension fund assets according to the present law.

(3) Beginning with the date of Romania's accession to the EU, administrators may choose:

a) depositaries headquartered in other EU or EES state and adequately licensed for this activity;

b) investment managers headquartered in other EU or EES state and adequately licensed for this activity;

Upon request from the competent authorities from the origin state of the administrator, the Commission may deny the Romanian depositary the right to freely dispose of the pension fund assets.

ART. 26 (1) The administrator shall charge a fee from participants and beneficiaries for the management of a pension fund.

(2) The levels of fees shall be established in the pension scheme prospectus and shall be the same for all participants and beneficiaries.

(3) Any change of the fees shall be notified to participants at least 6 months before it is applied.

ART. 27 (1) Beginning with the moment the first pension fund managed by the administrator is licensed, the administrator shall pay a monthly operation fee, for the whole duration of the license.

(2) If the administrator fails to pay the monthly fee stipulated by par. 1, the Commission shall charge penalties according to current regulations regarding overdue payments to the state budget.

ART. 28 (1) Licensing, authorization and functioning fees shall be established by Commission norms.

(2) The fees stipulated by par. (1) shall be borne by the applicant, i.e. administrator.

(3) If the authorization or licensing application is rejected, the paid fee shall not be reimbursed.

(4) The Commission may change the level of fees in its annual budget draft.

ART. 29 (1) Beginning with the date of Romania's accession to the EU, any entity licensed to be an administrator in other EU member states or European Economic Area states can become an administrator in the sense of the present law.

(2) Administrators which have been licensed, authorized or have undergone some similar procedure in order to operate as pension scheme administrator in a EU or EES state are exempted from licensing by the Commission.

(3) Beginning with the date of Romania's accession to the EU, administrators licensed in Romania can receive contributions from participants and companies from another EU or EES member state.

- (4) Beginning with the date of Romania's accession to the EU, persons who meet conditions for becoming participants in voluntary pension schemes, as well as Romanian companies, can contribute to pension funds managed by administrators licensed in another EU or EES state.
- (5) The Romanian administrator that intends to accept contributions from a participant in another EU or EES state needs the prior approval of the Commission.
- (6) The administrator mentioned by (5) above shall notify its intention to the Commission, mentioning the host member state, name of the participant and the main characteristics of the pension scheme.
- (7) If the Commission has no reason to consider that the administrative structure, financial situation, reputation, professional qualification or management experience of the administrator are incompatible with the activities to be carried out in the host state, then within 3 months the Commission shall send all the information mentioned by par. (6) above to the competent authorities of that state, and notifies this to the administrator.
- (8) Before an administrator from a EU or EES state starts managing a voluntary pension scheme with Romanian participants, the Commission shall notify the competent authority from the origin state, within 2 months from receiving the information mentioned in par. (6) above, the requirements of Romanian legislation regarding the pension scheme with Romanian participants, to be sent to the interested administrator.
- (9) Upon receipt of the information mentioned in par. 8, or if it receives no notification from the relevant authority within the term mentioned in par. 8, the administrator can begin to manage a voluntary pension scheme with Romanian participants, in compliance with the Romanian legislation regarding voluntary pensions.
- (10) An administrator from a EU or EES state that manages a voluntary pension scheme with Romanian participants shall comply with the information disclosure requirements of the Commission, according to the provisions of the present law.
- (11) The Commission shall notify the relevant authority from the origin state regarding any significant changes regarding the Romanian private pension legislation that have occurred.
- (12) The Commission shall permanently monitor the EU or EES administrator that manages a pension scheme with Romanian participants, monitoring its compliance with the requirements of the Romanian legislation regarding voluntary pensions, and disclosure requirements mentioned under par. (10).
- (13) If the monitoring reveals breaches of these requirements on the part of the administrator, the Commission shall immediately notify the competent authority from the origin state.
- (14) The Commission, together with the relevant authority from the host member state, shall adopt the necessary measures in order to make sure that the administrator from Romania ceases to breach requirements of social and labor legislation regarding voluntary pension scheme from the host member state.
- (15) If, despite measures taken by the relevant authority from the origin state of the administrator, or due to the lack of such measures, the administrator continues to breach the Romanian legislation, the Commission can, after informing the relevant authority from the origin state, take the necessary measures for preventing or punishing misbehavior, including, if absolutely necessary, denying the administrator's right to make any operations in the Romanian participants' accounts.
- (16) The Commission may require from the relevant authority from the origin state of

the administrator to decide on the issue of the separation between assets and liabilities that correspond to the Romanian activity, on the one hand, and the other assets and liabilities on the other.

(17) Upon request of the relevant authority from the host member state, the Commission shall have the Romanian administrator separate the assets and liabilities corresponding to the activities carried out in the host state from its other assets and liabilities.

Chapter III - Licensing of voluntary pension scheme prospectus

ART. 30 (1) The pension scheme prospectus shall be drafted and submitted by the administrator.

(2) Each prospectus needs to be licensed by the Commission.

(3) The prospectus can be changed only with the Commission's approval.

ART. 31 (1) In order to get the first voluntary pension scheme prospectus licensed, the pension company, investment management company or insurance company shall submit to the Commission an application together with the management license application, pension scheme prospectus, draft depositary contract and draft civil society contract.

(2) The first pension scheme prospectus is issued at the same time with the pension fund management license.

(3) The procedure for the licensing and modification of voluntary pension scheme prospectus shall be described by Commission norms.

ART. 32 The administrator proceeds with the publicity of the pension scheme prospectus only after it is licensed; failing to comply with this rule will lead to the withdrawal of the license of the administrator.

ART. 33

(1) The content of the voluntary pension scheme shall be established by Commission norms and shall contain at a minimum the following data and rules:

- a) name and headquarters of administrator;
- b) eligibility criteria for participants who want to join the voluntary pension scheme;
- c) level of contribution, as well as the way the contribution is paid;
- d) way of dividing the results of investment among participants;
- e) investment principles of the voluntary pension scheme;
- f) financial, technical and other types of risks involved in the voluntary pension scheme;
- g) the nature and distribution of these risks;
- h) the exclusive property right of participants to a scheme over the amounts in their individual accounts;
- i) conditions for the beginning and making of voluntary pension benefit payments;
- j) conditions for paying disability voluntary pension benefits;
- k) maximum levels of fees paid by the pension fund, broken down on categories;
- l) periodicity and procedure of reporting to participants;

m) conditions and procedures for stopping participation and transferring to another voluntary pension scheme.

ART. 34 (1) The Commission shall draft the framework management contract, which shall contain the following:

- a) the parties;
- b) the principles of the voluntary pension scheme;
- c) main rights and obligations of the parties and means of implementing these;
- d) way of management;
- e) ways of control to be exercised by auditors;
- f) the administrator's obligations to inform participants and authorities;
- g) administrator records regarding participants, contributions, investment and voluntary pensions;
- h) specific ways of identifying, reporting and fixing problems;
- i) responsibility of the parties;
- j) penalties;
- k) term of the management contract, ways of changing and terminating the contract;
- l) data regarding the depositary of the voluntary pension fund.

ART. 35 The depositary and auditor shall pay their authorization fee themselves.

ART. 36 (1) The pension scheme can be modified by joint agreement of the administrator and the majority of participants.

(2) Changes are enforced only after they are approved by the Commission.

ART. 37 (1) The Commission shall suspend the administrator's management license if it is proven that the pension scheme prospectus rules, the provisions of the present law or Commission norms have been breached.

(2) Beginning with the date the management license of the administrator is suspended, provisions regarding special administration (art. 58-70) shall apply.

(3) The administrator may appeal the Commission's decision to suspend the license in the competent court, in compliance with legal provisions regarding administrative action (law no. 554/2004).

ART. 38 (1) The Commission shall withdraw the management license of the administrator in one of the following situations:

- a) for failing to comply with the provisions of art. 12 (1), art. 16, art. 21, art. 22 (2) and (3) and art. 23;
- b) if the rate of return of the pension fund is below the minimum rate of return for 4 consecutive quarters;
- c) for failing to fulfill or failing to adequately fulfill obligations ensuing from the present law, Commission norms or the pension scheme prospectus;
- d) the administrator has not begun operating within 1 year after licensing or has not exercised its management duties for at least 6 months;
- e) if the shareholders have decided to liquidate, merge or split the administrator;
- f) if the administrator is unable to make payments;
- g) the administrator no longer complies with operation conditions;
- h) the administrator fails to adequately protect the interest of participants and beneficiaries;

- i) the technical provisions are not high enough for the whole activity or assets are not enough to cover technical provisions;
- j) in the case of activities mentioned at art. 29 (3), if an administrator does not comply with the requirements of the pension legislation of the host member state;
- k) in any other circumstances stipulated by Commission norms.

ART. 39 (1) If the Commission withdraws the management license, the administrator has to submit to the Commission the financial statement of the fund at the withdrawal date, audited by a financial auditor.

(2) Beginning with the date when the management license is withdrawn, the Commission shall decide to initiate special administration.

ART. 40 (1) The written and motivated decision to turn down the setting-up authorization or management license or the decision to suspend or withdraw the management license shall be communicated on the working day that follows the day it is adopted, and it can be appealed in the relevant administrative court.

(2) While it is resolved in court, the appeal mentioned in par. 1 shall not suspend the measures taken by the Commission.

(3) The appeal shall have priority in court and shall be considered an urgent matter.

(4) The procedure for suspending or withdrawing the management license shall be established by Commission norms.

(5) Within 10 days from the end of the appeal term, or, as the case may be, after the final court decision that settles the appeal, the Commission shall publish the announcement regarding the withdrawal of the management license in the Official Gazette and in two major newspapers.

ART. 41 The Commission shall issue norms regarding the methodology for setting-up licensing, as well as for granting, suspending and withdrawing the management license.

Chapter IV Setting up, licensing and withdrawing the license of voluntary pension funds

ART. 42 (1) The voluntary pension fund needs to be licensed by the Commission after the licensing of the administrators and of the voluntary pension scheme prospectus.

(2) The license shall be issued in response to an application submitted by the administrator; the following documents shall be attached to the application:

- a) individual joinder to the civil society contract that establishes the voluntary pension scheme and to the pension scheme prospectus;
- b) civil society contract that sets up the voluntary pension fund;
- c) other documents required by Commission norms.

ART. 43 (1) The Commission may request from the administrator additional documents and information within 30 days from receipt of the application for licensing of the voluntary pension fund.

(2) The Commission may check any issue related to the licensing application; to this

effect, the Commission is entitled to:

- a) solicit the competent authorities;
- b) request documents and data from other sources.

ART. 44 (1) A voluntary pension fund needs to have at least 100 participants and shall be set up by civil contract.

(2) The content of the framework civil contract that sets up a voluntary pension fund shall be established by Commission norms.

(3) The name of the pension fund shall include the expression “voluntary pension fund”.

(4) The name of the pension fund should not mislead participants, potential participants or other persons.

ART. 45 (1) The Commission shall check whether legal conditions are met by fund members, it shall endorse the civil contract and grant or deny the license of the voluntary pension fund by motivated decision, within 30 calendar days from receiving the last set of documents and information from the administrator.

ART. 46 (1) The Commission shall turn down the licensing application if the documentation:

- a) remains incomplete even after 30 days have passed from the request of additional information or documents;
- b) is not drafted according to legal provisions;
- c) contains clauses that may injure the interest of participants or fail to adequately protect them.

(2) The motivated decision to turn down the licensing application shall be sent to the administrator by the Commission within 10 working days from its issuing.

ART. 47 (1) The voluntary pension fund shall receive contributions only after being licensed by the Commission.

(2) The financial resources of the pension fund are:

- a) net contributions turned into fund units;
- b) benefits due to beneficiaries which were not claimed within the general prescription term;
- c) penalties for overdue contributions;
- d) amounts generated by the investment of revenue mentioned at letters a)-c) above.

(3) The pension fund shall bear the following management-related expenses:

- a) management fee;
- b) depository fee;
- c) trading fees;
- d) banking fees;
- e) pension fund auditing fees.

ART. 48 A pension fund cannot be declared bankrupt.

ART. 49 (1) A voluntary pension fund can be managed and represented in relationships with third parties, including in front of the court, only by the administrator who has a management license for that fund.

ART. 50 All the information regarding voluntary pension funds shall be provided by the administrator.

ART. 51 (1) All participants and beneficiaries to a pension fund have the same rights and obligations and should be treated equally.

(2) The right to equal treatment shall be preserved if participants or beneficiaries change their work place, domicile or residence by moving to another EU or EES country.

(3) If the work place, domicile or residence of participants changes to another country, they shall have the right to choose between continuing to contribute to a Romanian voluntary pension fund or contributing to another pension fund.

(4) No eligible person can be discriminated against or denied the right to join a pension fund.

ART. 52 (1) The Commission may withdraw the license of a voluntary pension fund when the number of participants has dropped below the legal minimum and remained so for one quarter.

(2) The administrator shall cease any activity corresponding to the pension fund after it is informed of the withdrawal of its license.

(3) Beginning with the date when the Commission has withdrawn the license of a voluntary pension fund, provisions regarding special administration (art. 58-70) shall apply.

ART. 53 (1) The decision to turn down the fund licensing application or to withdraw the license can be appealed in the competent administrative court.

ART. 54 Within 10 working days from the end of the appeal term or after the final court decision that settles the appeal, the Commission shall make public the withdrawal of the management license in the Official Gazette and in two major newspapers.

Chapter V Special supervision

ART. 55 (1) The purpose of special supervision is the application of additional measures to limit risk and to ensure the recovery of the pension fund in order to protect the interests of participants and beneficiaries, whenever Commission controls reveal deficiencies that are not suitable for the initiation of special administration

(2) The setting up of special supervision, as well as the appointment of the special supervision council, shall be done by the Commission.

(3) The Commission shall immediately notify to the administrators the setting up of special supervision, together with documents regarding the reasons the measure was taken and ways it can be appealed.

ART. 56 (1) The members of the special supervision council have access to all the documents and records of the pension fund and of the administrator and are bound to keep this information confidential.

(2) The special supervision council does not replace the management bodies of the administrator

ART. 57 (1) The special supervision council shall assist and supervise the activity of the administrator that pertains to the pension fund.

(2) The special supervision council has the following attributions:

a) analyzing the financial situation of the pension fund and of the administrator and presenting periodical reports about it to the Commission;

b) monitoring the way in which the administrator applies the measures for fixing problems that were identified by the control bodies of the Commission;

c) monitor the implementation of the plan for fixing problems or for the financial recovery of the fund proposed by the administrator;

d) suspending or canceling those decisions made by the administrator that do not observe prudential regulations or that lead to the deterioration of the financial situation of the pension fund;

e) propose to the Commission the enforcement of penalties if the administrator does not observe the measures suggested by the special supervision council;

f) other attributions established by the Commission.

(3) During special supervision, the special supervisor shall endorse all the decisions made by the management bodies of the administrator.

Chapter VI Special administration

ART. 58 (1) The purpose of special administration is the exercise of fiduciary responsibility to preserve the value of pension fund assets and to limit losses in order to protect the rights of participants and beneficiaries.

(2) Special administration shall be set up when the management license is suspended or withdrawn.

ART. 59 In the following working day after the decision to suspend the license was made, the Commission shall inform the administrator of the suspension and request the other licensed administrators to volunteer to take over for temporary management the funds and prospectuses of the pension scheme.

ART. 60 Within 5 working days, the administrators shall send their temporary management offers.

ART. 61 (1) Within 5 working days from the expiry of the term mentioned in art. 60, the Commission shall select one of the offers.

(2) The main selection criteria are the performance, investment policy and level of management expenses of the administrators.

ART. 62 The administrator chosen according to the provisions of art. 61 (2) shall take over the management of the assets of pension funds.

ART. 63 If no offers are sent by administrators, then the Commission shall appoint a special administrator, chosen among the licensed administrators, for the temporary management of the pension fund, within the term mentioned in art. 60.

ART. 64 In the working day that follows the day the special administrator is appointed, the Commission shall publicly announce the participants of the pension

fund that they need to choose a new administrator within 90 calendar days.

ART. 65 After the allotment is over, the Commission shall inform the appointed administrator of the identity of the new administrator where the personal assets of each participant allotted by the Commission have to be transferred by the end of the twelve-month period.

ART. 66 The special administrator appointed by the Commission shall manage the pension fund assets, including contributions received in this period, for a term of up to 12 months, with a view to transfer personal assets to the chosen administrator.

ART. 67 If, by the end of the three-month term, participants have not chosen another administrator, the Commission shall allot participants to other administrators within 30 calendar days, taking into account the criteria stipulated by art. 61, par. 2.

ART. 68 The setting up of special administration and the appointment of the special administrator can be appealed in the competent administrative court,.

ART. 69 The announcement regarding the setting up or end of special administration, as well as the special administrator appointed by the Commission, shall be published by the Commission in Part IV of the Official Gazette and in two major newspapers.

ART. 70 The Commission shall issue norms regarding:

- a) criteria for selecting a special administrator and conditions that have to be met by it;
- b) attributions of the special administrator;
- c) procedure for managing the fund until the final decision of the competent court is reached.

Chapter VII Transfers between voluntary pension funds

ART. 71 (1) The voluntary pension scheme prospectus contains rules regarding the transfer to another voluntary pension fund.

(2) A participant who has joined a new voluntary pension fund may:

- a) transfer its personal assets from the old voluntary pension funds to the new fund;
- b) remain a participant of all the voluntary pension funds and gather them together when he gets the right to receive pension benefits.

ART. 72 (1) If a participant wishes to transfer its personal assets to another voluntary pension fund, it has to notify the administrator of the old voluntary pension fund and send it a copy of its joinder act.

(2) The Commission shall issue norms regarding:

- a) the form and content of the document to be used by participants to notify the administrator of their transfer to another voluntary pension fund;
- b) procedures for joining a new voluntary pension fund.

ART. 73 (1) Within 5 calendar days from notification, the administrator of the old

fund shall transfer cash to the administrator of the new fund.

(2) The transfer of cash will include the personal assets calculated on the day the transfer request was made, less legal deductions.

(3) The administrator of the old voluntary pension fund shall send to the administrator of the new fund all the data regarding contributions made into the account of the participant, as well as transfers of cash pertaining to the account of that participant.

Chapter VIII Participants and contributions

ART. 74 (1) A participant to a voluntary pension fund is an employee, public clerk or person authorized to carry out an independent activity, an elected person, a person who is part of the executive, legislative or justice authority, - during the period of their term in office - a member of a cooperative (as defined by Law 1/2005), as well as any other person who has professional or agriculture income, who joins a voluntary pension fund and who contributes and/or on whose behalf contributions have been made to a pension fund and who has a future right to voluntary pension benefits;

(2) Joining a voluntary pension fund is an individual option.

(3) When signing the joinder act, participants shall be informed of the pension scheme conditions, especially the following aspects: rights and obligations of the parties, financial, technical and other types of risks, nature and distribution of these risks.

ART. 75 (1) The individual joinder act is a written contract signed between a natural person and the administrator, containing the person's acceptance of the civil contract and pension scheme prospectus, as well as the fact that the person has received a copy of these documents and has accepted their content.

(2) The administrator cannot turn down any person who has the right to join a scheme.

(3) The form of the joinder act is the same for all participants in a fund.

(4) The framework individual joinder act shall be established by Commission norms.

(5) The administrator may change this act only with the approval of the Commission.

ART. 76 (1) Contributions to a voluntary pension fund shall be established according to the rules of the corresponding pension scheme; they shall be paid (transferred) by the employer or, as the case may be, the participant, together with the mandatory social security contributions, into the pension fund account identified in the individual joinder act.

(2) The deductible contribution to a voluntary pension fund can be of up to 15% of the monthly gross earned (or similar) income of the participant.

(3) The contribution described by par. 2 can be divided between employer and employee, according to the provisions of the collective labor contract, or, if there is no such contract, according to a protocol signed with representatives of the employees.

(4) The following entities may propose participation in a voluntary pension fund: the employer or labor union or, as the case may be, representatives of employees, via the collective labor contract signed by the company, group of companies or industry branch; if there is no collective labor contract and/or no labor union, the employer by itself or by association with other employers and representatives of employees.

(5) The employer shall transfer every month the contribution owed by every employee who has joined a voluntary pension fund, based on a copy of the individual joinder act signed with an administrator.

(6) The Commission shall calculate penalties for failing to transfer contribution in due

time, in compliance with current regulations regarding failure to transfer contributions to the state budget in due time.

(7) The administrator shall inform the employer, the Commission and the employee of the employer's failure to transfer the contribution.

(8) Contributions to voluntary pension funds mentioned in par. 2 are deductible from the monthly gross salary or equivalent revenue, in amount of 200 EUR per fiscal year.

(9) The employer's contribution to voluntary pension funds is tax deductible in amount of 200 EUR per fiscal year for each participant.

(10) In order to recover the amounts owed according to par. 5, the administrator may initiate proceedings against the employer, according to the provisions of the Civil procedure code.

(11) Participants may at any time change the level of, suspend or cease contributions to a voluntary pension fund, provided they comply with the ceilings stipulated by par. 2 and that they notify the administrator and employer, as the case may be, at least 30 days before the suspension or cessation of contributions.

(12) The notification stipulated by par. 11 shall not affect in any way the personal assets and gives the employer the right to suspend or stop the contractual obligation.

ART. 77 (1) If a participant stops contributing, he retains his rights, according to the rules of the voluntary pension scheme, except if he has required the transfer of cash to another voluntary pension fund.

(2) A participant to a voluntary pension fund in Romania who has been sent by his company to work in another country has the right to continue to contribute to that fund for the period he is away.

(3) If a participant becomes unable to work due to disability, he will be entitled to use his personal assets, in compliance with Commission norms.

(4) If a participant dies before retirement, his personal assets as calculated at that date shall be distributed to beneficiaries, according to the inheritance act and to Commission norms.

(5) If the participant or beneficiary changes its work place, domicile or residence to another EU member state or to a state belonging to the European Economic Space, they retain the right to voluntary pension benefits gained in voluntary pension schemes in Romania; the benefits shall be paid in that state; the amount is obtained after deduction of all fees and expenses associated with the payment.

Chapter IX Participant accounts and evaluation of assets

ART. 78 (1) The participant is the owner of the personal assets in its account.

(2) The personal assets cannot be seized or liquidated in court.

(3) The personal assets cannot be mortgaged or transferred, it cannot be used for giving loans or as loan collateral.

ART. 79 (1) Contributions are collected based on personal ID codes into individual participant accounts.

(2) Contributions to a voluntary pension fund and transferred cash shall be converted into accounts units and subunits, calculated with six figures after the point.

(3) The total value of the accounts units of a voluntary pension fund is always equal to the total value of fund assets.

(4) The Commission shall issue norms regarding net assets, principles for the

evaluation of pension fund assets and liabilities.

ART. 80 (1) Contributions and cash transferred to a voluntary pension fund shall be converted into fund units within 2 working days from the date they are cashed in.
(2) The initial value of a fund unit shall be 10 lei.

ART. 81 (1) The value of net assets and the value of the fund unit of a voluntary pension fund shall be calculated both by the administrator and the depository on each working day and shall be announced to the Commission in the same day.

(2) The value of net assets and the value of the fund unit of a voluntary pension fund shall be audited annually by an independent auditor approved by the Commission, who cannot be an affiliate of the employer, administrator or depository.

(3) Auditors who were licensed or have undergone a similar authorization procedure in order to operate on the pension market in a EU or EES state do not need to be licensed by the Commission.

ART. 82 The administrator that has received contributions for at least 24 months shall calculate, in the last working day of each quarter, the rate of return of each voluntary pension fund for the past 24 months and announce it to the Commission.

ART. 83 The Commission shall issue norms regarding:

- a) rules for calculating the daily value of net total assets and the daily value of a fund unit;
- b) the depository's obligations to inform the Commission of the values of net assets, fund units, rate of return, as well as the method of making this information;
- c) form and date of the publication of the weighted average rate of return of all funds;
- d) procedure for approving the financial auditor;

Chapter X Investments made by voluntary pension funds

ART. 84 The Commission shall check the administrators' compliance with their obligation to invest voluntary pension fund assets in a prudential manner and in compliance with the following rules:

- a) assets shall be invested in the best interest of participants and beneficiaries; in case of potential conflicts of interest, the administrator that manages the assets of voluntary pension funds shall make sure that investment is made exclusively in the participants' interest;
- b) assets shall be invested in a manner that ensures their safety, quality, liquidity and profitability; assets that are meant to cover reserve funds shall also be invested in a way that is appropriate to their purpose and to the term of benefits due to participants and beneficiaries;
- c) assets shall be invested predominantly on regulated markets, as defined by Law 297/2004 regarding the capital market;
- d) investing in derivatives is only allowed if this leads to a lowering of investment risk or if it facilitates the efficient management of assets;
- e) assets shall be appropriately diversified, so as to avoid excessive dependence on a particular type of assets, issuer, group of companies or risk clusters;

ART. 85 The Commission may decide not to apply the requirements of letters (c) and (e) of art. 84 for treasury bond investments.

ART. 86 (1) The administrator shall write up an investment policy declaration. The investment policy declaration shall comply with investment principles and shall include the following:

- a) asset investment policy, taking into account the nature and duration of obligations;
- b) methods for evaluating investment risk;
- c) risk management procedures;
- d) method for revising investment principles;
- e) the persons responsible with making decisions and investments, as well as procedures for making decisions.

(2) The administrator shall revise and fill in the investment policy declaration every 3 years or every time there is an important change in the policy, with the Commission's approval, and it shall inform the participants of the new investment policy.

ART. 87 (1) The administrator shall invest in the following categories of assets, complying at the same time with the provisions of art. 84:

- a) money market instruments - including Lei accounts and deposits opened with banks that are Romanian legal persons or with subsidiaries of a foreign credit institution licensed to operate on the territory of Romania, which are not undergoing special supervision or special administration or whose licenses have not been withdrawn - cannot represent more than 20% of the total value of fund assets;
- b) investments in treasury bonds issued by the Ministry of Public Finances of Romania, issued by EU member states or EES states can represent up to 70% of the total value of fund assets;
- c) investments in bonds and other securities issued by local governments of Romania or EU or EES member states complying with the requirements of Commission norms, can represent up to 30% of the total value of fund assets;
- d) investments in securities traded on a regulated and supervised market from Romania, EU states or EES states can represent up to 50% of the total value of fund assets;
- e) investments in treasury bonds and other securities issued by third-party states can represent up to 15% of the total value of fund assets;
- f) investments in bonds and other securities issued by local governments of third-party states can represent up to 10% of the total value of fund assets;
- g) investments in bonds and other securities of foreign non-governmental bodies, provided they are rated on authorized exchanges and that they meet the rating and other requirements set out by Commission norms, can represent up to 5%;
- h) investment fund units of other investment funds from Romania and other countries can represent up to 5% of the total value of fund assets;
- i) other forms of investments stipulated by Commission norms.

(2) The investments stipulated by par. (1), shall be made, wherever applicable, in compliance with National Bank regulations regarding foreign currency operations.

(3) The Commission may temporarily change the investment ceilings stipulated by par. (1) and shall issue norms to this effect.

(4) The following ceilings shall apply:

- a) 5% of the assets of a fund can be invested in a single company or in each of its asset categories;

b) 10% of the assets of a fund can be invested in the assets of a group of issuers and their affiliated persons;

ART. 88 Investment of voluntary pension fund assets shall be exempted from taxes until benefits due to participants and beneficiaries are paid.

ART. 89 (1) The administrator shall vote on behalf of participants in the general shareholder assemblies of the companies where the pension fund assets have been invested.

(2) The vote will be exercised exclusively in the best interest of participants and beneficiaries of a voluntary pension fund.

ART. 90 (1) Pension fund assets cannot be invested in:

- a) assets that cannot be alienated according to the law;
- b) assets whose evaluation is uncertain, as well as antiques, works of art, cars and other such assets;
- c) real estate;
- d) shares, bonds and other securities issued by the administrator, provider of benefits;
- e) any other assets provided for in Commission norms.

(2) Pension fund assets cannot be alienated to:

- a) the administrator or auditor;
- b) the depositary;
- c) the special administrator;
- d) members of the Commission board and Commission staff;
- e) persons affiliated to the entities listed at letter a-d;
- f) any other persons provided for in Commission norms.

(3) Pension fund assets cannot be used as guarantee and cannot be used for giving loans; any such action would be null and void.

ART. 91 (1) The Commission shall calculate and publish the following information on a monthly basis:

- a) weighted average rate of return of all voluntary pension funds for the past 24 months;
- b) the rate of return of each voluntary pension fund for the past 24 months;
- c) minimum rate of return of all funds.

(2) If the rate of return of a voluntary pension fund is lower for 4 consecutive quarters than the minimum rate of return of all funds, then the Commission shall withdraw the license of the administrator of that fund and apply the procedure regarding special administration described in art. 58-70.

Chapter XI Administrator revenues

ART. 92 (1) The administrator's revenue will come from:

- a) management fees;
- b) transfer penalties;
- c) fees for services requested by participants, provided according to the provisions of the present law.

(2) Management fee shall be formed by:

- a) deduction of a percentage from contributions paid by participants; this percentage

cannot be higher than 5% and the deduction shall be made before contributions are converted into fund units;

b) deduction of a negotiated percentage from the net assets of the voluntary pension fund; this percentage cannot be higher than 0.2% per month and it shall be mentioned in the pension scheme prospectus.

(3) The transfer penalty is the amount paid by the participant if transferring to another fund sooner than 2 years after having joined the previous fund; its upper limit shall be established by Commission norms.

(4) The administrator shall use the same method for calculating and charging fees for all the participants in a particular voluntary pension fund.

Chapter XII Payment of pension benefits

ART. 93 (1) Personal assets shall be used only for getting a voluntary pension.

(2) The right to receive voluntary pension benefits will become effective, upon request of the participants, if the following conditions are simultaneously met:

a) retirement age is 60;

b) at least 90 monthly contributions have been paid;

c) the value of personal assets is equal or higher than the amount necessary to get the minimum voluntary pension stipulated by Commission norms.

ART. 94 (1) The following situations are exceptions to the provisions of art. 93:

a) if the participant does not meet one of the conditions stipulated by art. 93, par. 2, letters b or c, then he can choose between getting the amount gathered in his account as a lump payment or getting it in installments during a period of up to 5 years;

b) if the participant retires for disability reasons, as defined by Law no. 19/2000 regarding the public pension system, then he can get:

1. the amount gathered in his account as a lump payment or in installments for up to 5 years, if he does not meet the condition stipulated by art. 93, par 2, letter c, according to Commission norms;

2. a voluntary pension whose conditions and terms shall be set by a special law regarding the organization and functioning of the system for the payment of pensions regulated and supervised by the Commission, if the participant meets the condition stipulated by art. 93, par 2, letter c;

c) if the participant dies before applying for voluntary pension benefits, then the amount gathered in his account shall be paid to beneficiaries, in the conditions and in the amount established by the individual joinder act and the inheritance deed;

d) if the participant dies after the benefits have started to be paid and the participant has chosen a voluntary pension with a 'survivor' option, then the corresponding amounts shall be paid to the person chosen by the participant.

e) if the participant dies after the benefits have begun to be paid and the participant has not chosen a voluntary pension with a 'survivor' option, then the corresponding amounts shall be paid to beneficiaries.

ART. 95

Within 3 years from coming into force of this law, a special law regulating the organization and functioning of the system for the payment of pensions regulated and supervised by the Commission shall be passed.

ART. 96 The voluntary pension shall be subject to legal regulations regarding taxation of pensions and liquidation of assets in court.

Chapter XIII Interdictions

ART. 97 (1) It is forbidden to offer collateral benefits to a person in order to persuade them to join or not leave a voluntary pension fund.

(2) It is forbidden to offer collateral benefits to an employer or to persons affiliated to that employer in order to determine them to persuade their employees to join a particular voluntary pension fund.

(3) It is forbidden to offer collateral benefits to a trade union or other collective entity or to persons affiliated to that union or entity, in order to determine them to persuade their members to join a particular voluntary pension fund.

(4) It is forbidden to offer collateral benefits to foundations, associations of any type, political parties, employer unions or any associative structure as a reward or for determining them to persuade their members to join a particular voluntary pension fund.

ART. 98 (1) Administrators, depositaries, employers and their affiliated persons must not:

a) convey false or misleading information, make claims or statements - including in advertising materials or other promotional materials or the written materials distributed to participants or potential participants - about a voluntary pension scheme prospect, a voluntary pension fund or its administrator;

b) make statements or projections in front of participants or potential participants, regarding the evolution of the investments of a voluntary pension fund, in forms or ways other than those stipulated by Commission norms.

(2) If the Commission finds that some information may be misleading, it may forbid the publication and distribution of that information and impose the publication of corrections within 30 calendar days.

ART. 99 (1) The Commission shall issue norms regarding information included in advertisements or promotional materials of the voluntary pension scheme prospectuses.

(2) The Commission shall issue norms regulating any other obligations related to the marketing of voluntary pension scheme prospectuses.

Chapter XIV Reporting and transparency obligations

ART. 100 (1) By May 31st of each year, the administrator shall publish a report including accurate and complete information regarding its activity in the previous calendar year.

(2) The administrator shall make the report available to any person applying to become a participant.

(3) The administrator shall make the report available on an annual basis to the Commission and to any participant of the voluntary pension fund.

ART. 101 The report shall contain the following data regarding the administrator and the voluntary pension fund managed by it:

- a) membership of the board of directors and management board, if applicable;
- b) name of shareholders that hold more than 5% of the total stock and the percentage of stock held by them;
- c) name and headquarters of the depositary;
- d) any other data required by Commission norms.

ART. 102 (1) The administrator shall submit a monthly report to the Commission regarding the investment made by each voluntary pension fund.

(2) The Commission shall draft the framework report that should contain at a minimum:

- a) the structure of the investment portfolio during the reported period;
- b) the percentage of assets invested in a single company or in each of its asset classes;
- c) the percentage of invested assets of a fund, in the case of the assets of a single issuer
- d) the way the report shall be transmitted and published.

(3) The Commission may request administrators, members of their management boards, other managers or persons in charge with control, to provide information regarding all the aspects of their activity, and to provide all the documents.

(4) The Commission may check relationships between an administrator and other administrators or companies, whenever an administrator transfer any attributions to them, so that the financial situation of the administrator is influenced by this or if they are relevant for an efficient supervision.

(5) The Commission can get a periodic declaration regarding the investment policy, annual accounts and reports, as well as all the documents necessary for supervision. They can include documents such as these:

- a) intermediary internal reports;
- b) actuarial assessments and detailed forecasts;
- c) studies regarding assets and liabilities;
- d) proofs of compliance with the investment policy principles;
- e) proofs of payment of contributions according to the schedule;
- f) reports of persons in charge with the auditing of annual accounts;

(6) The Commission may inspect the site of the administrator and, if necessary, as far as externalized functions are concerned, in order to check whether activities are carried out according to control regulations.

ART. 103 (1) The administrator shall send an annual written notification to each participant, at the latest address communicated by the participant, containing the number of fund units , their value and the administrator's situation.

(2) The administrator shall give the participant or beneficiary, or, as the case may be, its representatives, within 10 calendar days, any relevant information regarding the changing of the pension scheme rules.

(3) Upon request, the administrator shall provide to participants and beneficiaries, or, as the case may be, their representatives, the investment policy declaration mentioned by art. 10, par (2), letter c), and its annual accounts and reports.

(4) Each participant and beneficiary shall also receive, upon request, detailed and substantive information regarding: investment risk, investment options – if appropriate, existing investment portfolio, as well as information regarding risk exposure and investment costs.

(5) If the participant or beneficiary requests, besides the mandatory information he is entitled to according to par (1)-(4), additional information regarding its participation in a voluntary pension fund, the administrator shall provide this information, in exchange for a fee.

(6) The fee charged for providing the service stipulated by par. 5 shall be established by the Commission on an annual basis.

(7) If a participant of a voluntary pension scheme in Romania changes his work place, domicile or residence to another EU member state or European Economic Space state, the administrator shall send him a written notification including adequate information regarding his voluntary pension rights and his options in this situation.

ART. 104 (1) The administrator shall draft and send to the Commission by April 15th an annual report that should offer an actual and accurate image of the pension funds it manages; the report should include:

- a) situations of assets and liabilities, of revenue and expenses for each voluntary pension fund it manages;
- b) situations of assets and liabilities and an income statement of its own activity;
- c) situation of fees paid for the depositary, administrator and other situations regarding expenses requested by the Commission;
- d) number of participants in each voluntary pension scheme;
- e) other information requested by the Commission.

(2) The report mentioned at par. 1 shall be approved by an auditor endorsed by the Commission, who shall present conclusions regarding the administrator's compliance with its investment policy. The provisions of art. 81(3) shall be applied appropriately.

(3) The data included in the report stipulated by par. 1 has to be coherent, complete and clearly presented.

Chapter XV Asset depositary

ART. 105 The administrator shall sign depositary contracts with the same depositary for all the voluntary pension funds it manages.

ART. 106 (1) The depositary shall be subject to control by the National Bank of Romania and the Commission. It should offer sufficient financial and professional guarantees of being able to carry out its depositary activities in an efficient manner and to fulfill its obligations that ensue from this function.

(2) The depositary may sign depositary contracts with several administrators, provided it keeps the assets, operations and records of each voluntary pension fund separate from its own and from one another.

(3) The depositary cannot be an affiliate of the administrator.

ART. 107 (1) The depositary should simultaneously meet the following conditions:

- a) its object of activity, as authorized by the National Bank of Romania, should include the depositing of voluntary pension fund financial assets;
- b) have the Commission's approval for carrying out voluntary pension fund depositary activities;
- c) not be under special supervision or special administration;
- d) meet other requirements provided for in norms drafted by the Commission in consultation with the National Bank;

e) not to give credits, under any form, to the voluntary pension fund administrator;
(2) Employees or members of the management bodies of the depositary cannot be members of the board of directors or employees of the voluntary pension fund administrator whose financial assets are kept by that depositary.

ART. 108 When exercising its attributions, the depositary shall:

- a) receive and keep safely all the voluntary pension fund assets;
- b) keep records regarding securities in the dematerialized form that constitutes the financial assets of the voluntary pension fund;
- c) to calculate and communicate to the administrator the net value of the pension fund assets;
- d) update account records;
- e) send the administrator information regarding the voluntary pension fund assets;
- f) observe the instructions of the administrator, except when they are breaching the law or its articles of incorporation;
- g) send the Commission information and reports regarding the voluntary pension fund assets, in the conditions and within the terms established by Commission norms.

ART. 109 (1) The framework depositary contract, drafted by the Commission, shall contain clauses regarding:

- a) the obligations of the depositary and of the administrator;
- b) depositary fee and the way it is to be calculated;
- c) liability of parties and other requirements provided for in Commission norms.

ART. 110 (1) The depositary is responsible in front of the administrator, participants and beneficiaries for every injury suffered by them because of the depositary's failure to meet its obligations or inadequately meeting its obligations.

(2) The depositary cannot be exonerated from responsibility and its responsibility shall not be reduced if it passes its obligations onto another entity.

(3) The Commission shall check the compliance of the depositary contract with clauses set out by the framework depositary contract.

(4) The Commission shall issue norms regarding the modification of the framework depositary contract.

ART. 111 The Commission may force the administrator to choose another depositary if any of the conditions stipulated by art. 107, or art. 108 are no longer met.

ART. 112 If the framework depositary contract is terminated, the depositary shall transfer to another depositary the assets it keeps, as well as copies of the records regarding the fulfillment of its obligations; this should occur within a jointly agreed term, approved by the Commission and making sure that there is continuity in the fulfillment of contractual obligations.

ART. 113 The financial assets of the voluntary pension fund cannot be the object of the liquidation in court of the depositary's assets and they cannot be the object of any transaction.

ART. 114 (1) Beginning with the date of Romania's accession to the EU, a bank having its headquarters on the territory of another EU member state or European Economic Space state can become a depositary according to this law.

(2) Depositaries that were licensed or have undergone similar procedures to operate as a depositary of voluntary pension fund assets in a EU or EES state do not need to be licensed by the Commission.

Chapter XVI Technical provisions and guarantees regulated and supervised by the Commission

ART. 115 (1) The administrator must ensure a permanent adequate volume of liabilities corresponding to financial commitments resulting from the existing voluntary pension contract portfolio.

(2) The administrator that manages voluntary pension schemes which have protection measures against biometric risks and/or guarantees regarding investment performance, or an established level of benefits, must ensure technical provisions for all these schemes.

(3) The administrator must permanently have a sufficient, adequate level of assets to cover technical provisions regarding all the voluntary pension schemes it administers.

(4) Technical provisions are calculated annually. The calculation may be done every three years, if the administrator provides a report to the Commission and/or participants, regarding the changes that have occurred during those years. The report must reflect the changes of technical provisions and of the covered risks.

(5) The calculation of technical provisions shall be made and certified by an actuary or by another specialist in the field, such as an auditor, in compliance with national legislation, based on actuarial methods established by Commission norms and in compliance with the following principles:

a) the minimum level of technical provisions shall be calculated according to an actuarial evaluation that is sufficiently conservatory, taking into account all the commitments of the administrator in terms of services to be provided and contributions in the voluntary pension schemes it manages. These should cover voluntary pensions and payments in progress and should also reflect commitments resulting from the pension rights accumulated by participants. Economic and actuarial forecasts used for assessing commitments shall be chosen in a conservatory manner, taking into account, if necessary, an adequate margin for unfavorable situations;

b) the maximum interest rates used for calculation shall be chosen in a conservatory manner and shall be determined in compliance with national legislation. These conservatory interest rates shall be calculated taking into account:

- the return of the assets held by the administrator and the future return of investment and/or

- the return of T-bonds or high-quality bonds;

c) biometric tables used for the calculation of technical provisions shall be based on conservatory principles, taking into account the main characteristics of the participant group and of the pension schemes, especially the forecasted evolution for relevant risks;

d) the calculation methods and basis for technical provisions will as a rule remain constant from one fiscal period to the next. Discontinuities may be justified by changes in the legislation, economical conditions or demographic conditions that the provisions are based on.

(6) The Commission may establish additional requirements for the calculation of technical provisions, if it is considered that this measure is necessary for the adequate

protection of participants' interests.

(7) The Commission may allow the administrator to have an asset level below that of technical provision, provided a concrete and feasible plan for covering provisions is drawn up, in compliance with par. (3). The requirements to be met by this plan shall be established by Commission norms.

(8) The provisions of par. (7) do not apply for activities carried out as described in art. 29 (3).

ART. 116 (1) With a view to protect the participants and beneficiaries, a voluntary pension guarantee fund - hereinafter the Guarantee fund - shall be set up by contribution of the administrators and pension providers, as the case may be.

(2) The purpose of the Guarantee fund is the payment of benefits due to the participants and beneficiaries of voluntary pension funds in cases when the administrators or pension providers, as the case may be, cannot provide these benefits.

(3) The Guarantee fund shall be set up within 90 calendar days from the licensing for pension management of at least 3 administrators.

(4) The management of the Guarantee fund shall be monitored and controlled by a Committee made up of one representative of each administrator

(5) The way the Guarantee fund is to be set up and used, as well as the level and periodicity of payments into this fund shall be established upon proposal of the Committee mentioned in par. 4, with the Commission's approval.

(6) The Guarantee Fund shall be calculated and certified by an actuary or another specialist in the field, including a financial auditor, in compliance with the national legislation, based on actuarial methods established by Commission norms.

(7) The management of the Guarantee fund shall be made under the control and monitoring of the Commission.

(8) The money of the Guarantee fund shall be placed in instruments issued by or run by the State Treasury: treasury bonds, interest deposits and any other financial instruments to be specified by Commission norms, with a view to their optimal investment.

ART. 117 Changing the level of contribution to the Guarantee fund can be done only with the Commission's approval.

ART. 118 The amounts deposited in the Guarantee fund cannot be liquidated in court.

ART. 119 The Commission shall adopt norms regarding the procedures for the organization and functioning of the Committee described by art. 116, par. 4 , as well as procedures for the Committee's control, monitoring and decision taking processes, the procedure and conditions for making payments into and out of the Guarantee fund, recovering payments advanced from the guarantee fund and other aspects related to the Guarantee fund

Chapter XVII Legal responsibility

ART. 120 (1) Breaching the provisions of the present law shall entail civil or criminal responsibility, as the case may be.

(2) The administrator or employer, as the case may be, is responsible in front of participants for injuries resulting from the formers' failure to meet their obligations or

inadequately meeting their obligations, except for force majeure cases.

(3) Any person considering themselves harmed by failure to apply the provisions of the present law is entitled to take action in court.

ART. 121 (1) The following offences are misdemeanors:

- a) a depositary failing to fulfill or inadequately fulfilling its obligations;
- b) failing to comply with the provisions of art. 20, par. 1;
- c) failing to comply with the provisions of art. 44, par. 3 and par. 4;
- d) failing to comply with the obligations stipulated by art. 76, par. 5 and par. 7;
- e) exceeding the ceilings stipulated by art. 87, par. 1 and 4;
- f) investing in the asset categories mentioned by art. 90, par. 1;
- g) failing to comply with the provisions of art. 92, par. 2, regarding the way fees shall be calculated and charged.
- h) failing to comply with the provisions of art. 98, par. 1;
- i) failing to comply with one of the terms stipulated by art. 100, par. 1, art. 102, par. 1, art. 103, par. 1 and art. 104;

(2) The misdemeanors described by par. 1 shall be punished with a fine between 10,000 RON and 50,000RON.

(3) The offender may pay half of the minimum amount stipulated at par. 2 within 48 hours from the infliction of the fine; this possibility shall be mentioned in the fine report handed to the offender.

(4) The identification of misdemeanors and infliction of penalties shall be done by personnel empowered by the Commission.

ART. 122 (5) The provisions of art. 121 shall be supplemented by the provisions of Government Ordinance no. 2/2001, approved and amended by Law no. 180/2002, with the subsequent amendments and supplementations.

ART. 123 (1) Using the contributions withheld from participants for other purposes and failing to transfer them is a felony and shall be punished with prison from 6 months to 2 years or with a fine.

(2) The following deeds are felonies and shall be punished with prison from 6 months to 2 years or with a fine:

- a) using false information, documents or statements, or any other illegal means in order to get the licenses mentioned in the present law;
- b) unauthorized management or changing of the voluntary pension schemes;
- c) managing an unlicensed voluntary pension fund;
- d) carrying out other activities than the ones the administrator was licensed for.
- e) breaching the provisions of art. 97 of the present law.

Chapter XVIII Final and transition provisions

ART. 124 The provisions of the present law shall be supplemented with the existing legislation, as long as they do not conflict.

ART. 125 Within 6 months from the enforcement of the present law, the Commission shall draft norms, approved by decision of the Commission chairman, and publish them in the Official Gazette.

ART. 126 After the enforcement of this law, the provisions of Law no. 249/2004 regarding occupational pensions, as well as any other contrary provisions, are repealed.

The present law transposes the provisions of:

- a) Directive 98/49/EC of June 29, 1998, regarding the protection of additional pension rights of employees or independent professionals circulating in the European Community, published in the Official Gazette of the European Community no. L209/25.07.1998;
- b) Art. 15, 16 and 17 of Directive no. 85/611/CEE on legal, regulating and management provisions regarding certain collective securities placement bodies, published in the Official Gazette of the European Community no. 375/31.12.1985, with the amendments made by 141/11.06.1993;
- c) Directive no. 2003/41/CE on the activities and supervision of institutions for the providing of occupational pensions, published in the Official Gazette of the European Union no. L235 of 23.09.2003.